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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.             | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------------------|------------------|
| 10/537,983   | 06/08/2005  | Peter Osypka         | SMB-PT143 (PC 04 234 M<br>US    | 9424             |
| 3624   | 7590        | 08/23/2006           | EXAMINER<br>FAULCON JR, LENWOOD |                  |
| VOLPE AND KOENIG, P.C.<br>UNITED PLAZA, SUITE 1600<br>30 SOUTH 17TH STREET<br>PHILADELPHIA, PA 19103 |             |                      | ART UNIT<br>3762                |                  |
| PAPER NUMBER   |             |                      |                                 |                  |

DATE MAILED: 08/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/537,983             | OSYPKA, PETER       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Lenwood Faulcon, Jr.   | 3762                |  |

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed June 12, 2006, have been fully considered but they are not persuasive.

Examiner disagrees with Applicant's argument that the electrode arrangement as taught by the Alt reference is incapable of acting on the outside of a patient heart (see for example Applicant's Arguments page 6, lines 5-10. Particularly, Examiner notes that the Alt reference discloses the positioning of the electrode arrangement in an epicardial location (see for example the Abstract), which is the surface of the myocardial tissue. Further, the Alt reference discloses an embodiment in which the system's electrical lead and electrode arrangement can be implanted by puncturing the chest/abdominal wall of a patient (see for example the Abstract, col.7 lines 9-16); which is in addition to the embodiment that requires introduction through a vein (i.e. transvenous introduction) as Applicant has argued (see Applicant's Arguments page 6 lines 10-16, and Alt @ col. 7 lines 55-65). Thus, Examiner maintains the rejections of claims 3-7 for the reasons as set forth above and in the previous Office Action of March 16, 2006.

### ***Claim Rejections - 35 USC § 103***

2. Claim 2-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alt (U.S. Patent No. 5,411,527) as applied to claims 1-2 above, and further in view of Vane et al. (U.S. Patent No. 6,311,087), as applied in the previous Office Action of March 16, 2006.

In regards to claims 2-7, Examiner maintains similar rejections as set forth in the previous Office Action of March 16, 2006, and as discussed above.

In regards to claim 8, the Alt reference does not specifically teach of the use of several anchors that are provided one behind the other in the axial direction; however, Examiner takes the position that it would have been obvious to one having ordinary skill in the art to modify the system as taught by Alt to include several anchors that are provided one behind the other in the axial direction, since it well known in the art to utilize such a configuration and further be it would have been obvious to include multiple anchors, to increase the fixation of the electrode array to the desired site.

In regards to claim 9, the Alt reference does not specifically teach of a biventricular design; however, Examiner takes the position that cardiac stimulating systems are well known to incorporate a biventricular electrode/pacing arrangement, depending on the patient's particular needs. Further, Examiner takes the position that it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Alt to include a biventricular electrode/pacing arrangement, since such an arrangement is well known in the art.

In regards to claim 10, the Alt reference does not specifically teach of anode of the electrode being arranged at a distance to a cathode/pole located on the heart; however, Examiner takes the position that such an arrangement is well known in the art to provide effective and efficient stimulation, and thus it would have been obvious to one having ordinary skill in the art at the time of the invention to modify the system as taught by Alt to include such limitations.

**Conclusion**

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Bolduc (U.S. Patent No. 3,737,579), Cohen (U.S. Patent No. 4,991,578), Williams et al. (U.S. Patent No. 5,246,014), Stokes et al. (U.S. Patent No. 5,443,492), Struble et al. (U.S. Patent No. 6,070,101), Alferness et al. (U.S. 2002/0082647).
4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lenwood Faulcon, Jr. whose telephone number is 571-272-6090. The examiner can normally be reached on Monday-Thursday from 9 to 5 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes, can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

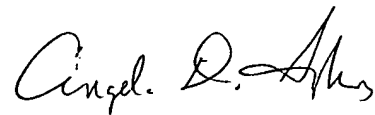
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lenwood Faulcon, Jr.

George Manuel

Primary Examiner



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